

**BEFORE THE PUBLIC SERVICE COMMISSION**  
**OF THE STATE OF DELAWARE**

IN THE MATTER OF THE PETITION OF DIRECT )  
ENERGY SERVICES, LLC TO REQUEST THE )  
PUBLIC SERVICE COMMISSION TO ISSUE, ON AN )  
EXPEDITED BASIS, AN ORDER DIRECTING )  
DELMARVA POWER & LIGHT COMPANY TO ) PSC DOCKET NO. 16-0744  
DISTRIBUTE AN EDUCATIONAL BILL INSERT )  
REGARDING THE OPTIONS AVAILABLE UNDER THE )  
CONTRACT AWARDED BY THE STATE OF DELAWARE )  
(FILED JUNE 30, 2016) )  
)

**ORDER NO. 8947**

**AND NOW**, this 6th day of October 2016, the Delaware Public Service Commission (the "Commission") determines and orders the following:

**WHEREAS**, the Delaware "Electric Utility Restructuring Act of 1999" provided that customers of a public utility should have the right to purchase electric supply from retail electricity providers; and

**WHEREAS**, the "Electric Utility Retail Customer Supply Act of 2006" further amended the Delaware Code to provide that customers of an electric public utility should have the right, but not be obligated, to purchase electricity from retail suppliers;<sup>1</sup> and

**WHEREAS**, Section 68 of Senate Bill 160 (the FY 2016 Bond and Capital Improvements Act of the State of Delaware) created an Electricity Affordability Committee (the "Committee") to evaluate an opt-in electricity affordability program for residential and small business customers based on the potential benefits derived from a combination of a multi-year fixed price per kWh offer, value added products and services

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<sup>1</sup> 26 Del. C. §§ 1002(2), 1003.

to help customers better manage their overall energy bills, and other potential consumer benefits; and

**WHEREAS**, after issuance and evaluation of a Request for Proposals, the Committee determined that the proposal by Direct Energy Services, LLC ("Direct Energy") best met the criteria of the Request for Proposal; and

**WHEREAS**, based on the Committee's selection, the Secretary of State was authorized to enter into a contract with a PSC-certified energy provider with sufficient fiscal and technical experience to implement the program; and

**WHEREAS**, the Secretary of State executed a contract with Direct Energy on June 16, 2016 to provide a voluntary opt-in electric supply product for Delaware residential and small commercial customers; and

**WHEREAS**, the contract permits Direct Energy to identify itself as "Approved by the State of Delaware" "as a special electric supply product offering for Residential and Small Commercial customers" and as "Electric Retail Supplier Exclusively Contracted by the State of Delaware;" and

**WHEREAS**, Section 68 of Senate Bill 160 further authorized the Secretary to direct the Commission "to coordinate the implementation of the program including appropriate customer awareness and marketing activities"; and

**WHEREAS**, on June 30, 2016, Direct Energy petitioned the Commission to issue an order directing Delmarva Power & Light Company ("Delmarva") to distribute a bill insert to all Residential and Small Commercial customers describing the various electricity supply and solar rooftop options offered by Direct Energy under the contract; and

**WHEREAS**, on July 26, 2016, under Commission Order No. 8922, the Commission opened this docket and authorized a public notice to solicit written comments and/or interventions from interested persons for the Commission's consideration of the Petition on or before August 31, 2016, and further noticed the Commission would hear this matter directly at its regularly scheduled meeting on September 20, 2016; and

**WHEREAS**, on or before August 31, 2016, comments were submitted by the Division of the Public Advocate ("DPA"), American Coalition of Competitive Energy Suppliers ("ACCES"), WGL Energy Services, Inc., the Retail Energy Supply Association ("RESA"), and Delmarva; and

**WHEREAS**, Direct Energy filed written comments on August 31, 2016 in support of its petition. As stated in its written comments, Direct Energy submitted a sworn statement, in the form of prefiled direct testimony, of Frank Lacey, that Direct Energy offered as an expert in public utility and the competitive retail electric business and policy; and

**WHEREAS**, on September 3, 2016, Delmarva filed an Emergency Motion ("Motion") to postpone the consideration of Direct Energy's petition and to allow for discovery on the sworn statement of Direct Energy's expert; or as an alternative, to strike Direct Energy's written comments and incorporated sworn statement; and

**WHEREAS**, on September 3, 2016, the DPA filed comment supporting Delmarva's motion and asking the Commission to strike Direct Energy's comments and sworn statement; and

**WHEREAS**, the Commission declined to address the Motion at its regularly scheduled meeting of September 6, 2016, citing a potential violation of the Administrative Procedures Act and Freedom of Information

Act because the Motion had not been noticed on the Commission's agenda for the September 6, 2016 meeting; and

**WHEREAS**, the Commission noted it would address Delmarva's Motion at its regularly scheduled September 20, 2016 meeting, prior to the conduct of the Hearing; and

**WHEREAS**, on September 6, 2016, the Commission approved RESA's Petition for Leave to Intervene;<sup>2</sup> and

**WHEREAS**, on September 15, 2016, Commission Staff provided the Commission and the parties in the docket a memorandum and recommended draft order (the "Draft Order"), which was noticed on the Commission's Agenda for the September 20, 2016 Commission meeting; and

**WHEREAS**, Staff's Draft Order recommended, among other things, that the Commission: (1) deny the petition of Direct Energy to order Delmarva to include Direct Energy's proposed bill insert in Delmarva's residential and small commercial customer utility bills; (2) direct the Parties to develop a generic customer choice educational bill insert for inclusion in Delmarva Residential and Small Commercial bills; and (3) direct Staff to develop and implement a webpage on the Commission's website that lists companies actively making offerings currently available for Residential and Small Commercial customers; and

**WHEREAS**, at the beginning of the September 20, 2016 hearing, Direct Energy informed the Commission that it was willing to withdraw its written comments and sworn statement filed August 31, 2016, and in exchange, Delmarva agreed to withdraw its Emergency Motion. All Parties reported

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<sup>2</sup> The DPA exercised its statutory right to intervene on July 15, 2016. No other Petitions for Leave to Intervene were received.

to the Commission that they were close to a settlement agreement similar to the Draft Order provided by Staff, but that the Draft Order required further changes and that it would be more constructive to allow the Parties additional time to bring a proposed order to the Commission for consideration at the October 6, 2016 meeting. Thus, all Parties requested a continuance of the proceeding until the October 6, 2016 meeting. The Commission granted this continuance and did not hear any further argument or testimony at the September 20, 2016 meeting; and

**WHEREAS**, the Parties to this docket have presented an agreed-upon draft form of order for the Commission's consideration and the Commission, having carefully reviewed the draft form of order, considered the representations of the parties, and deliberated the merits in an open public meeting;

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE  
VOTE OF NOT FEWER THAN THREE COMMISSIONERS:**

1. That the Commission hereby denies the relief sought by Direct Energy in its Petition.

2. That the Commission directs Delmarva, with input from the Parties, to develop a generic customer choice educational bill insert for inclusion in Delmarva's Residential and Small Commercial bills.

3. As proposed by Delmarva and agreed to by the Parties, the bill insert will include general information regarding customer choice and will refer to a Commission-maintained website for additional information. The bill insert will also include a list of active electricity suppliers, in alphabetical order, who meet the criteria set forth in paragraph 5, below, regarding inclusion on the new Commission webpage.

4. The incremental cost of the bill insert will be paid by electric suppliers who elect to participate in the bill insert pursuant to paragraph 3, above.

5. The Commission further directs Staff to immediately develop and implement a webpage on the Commission's website that lists in alphabetical order, the name, telephone number, website address, and link to website, of each Commission-certified supplier, that as of October 6, 2016, is actively offering supply choice options to Delmarva Residential and Small Commercial customers in Delaware. Commission-certified suppliers will be considered to be actively offering supply choice options if, pursuant to Delmarva's records as of October 6, 2016, a supplier: (a) has a total of no fewer than 10 combined Residential and Small Commercial customers in Delaware; (b) is registered with Delmarva; and (c) is ready to immediately begin accepting additional supply customers through at least the end of 2016. In addition, the website shall note in a footnote<sup>3</sup> any supplier that has been approved by the State of Delaware to provide "a special electric supply product offering to Residential and Small Commercial customers" by stating that the supplier is the "Electric Retail Supplier Exclusively Contracted by the State of Delaware."<sup>4</sup> In addition, suppliers who are certified by the Commission as of October 6, 2016 but as of October 6, 2016 are not meeting the requirements of (a), (b), and (c), may also be included in the listing if, by October 31, 2016, such suppliers provide a verification to the Commission, executed by an officer of such supplier,

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3 The footnote shall be indicated by a superscript number or symbol, such as an asterisk ("\*"), on Direct Energy's listing on the webpage (e.g., "Direct Energy\*"). The language in the footnote shall appear at the bottom of the page ("\*This supplier is the 'Electric Retail Supplier Exclusively Contracted by the State of Delaware.'" ).

4 Currently, Direct Energy is the only entity that meets these criteria.

confirming that the supplier will be fully prepared to begin accepting Delmarva Residential and Small Commercial supply customers as of November 1, 2016, or for inclusion on the Commission's website at any point after October 31, 2016, such verification may be provided at a subsequent date. The issue of any improvements or upgrades to the website shall be considered in Docket No. 15-1693. The issue of future educational choice bill inserts will also be reserved for Docket No. 15-1693. The Parties shall preserve their right to make any arguments or take any positions they so choose regarding the website in that docket. Delmarva has confirmed that it supports the issue of future bill inserts to educate its customers about choice in Delaware.

6. Delmarva shall use reasonable best efforts to distribute the bill insert starting in bills for the December bill cycles.

7. Delmarva maintains a customer list on a secure supplier website available to all Commission-certified suppliers registered with Delmarva to provide electric supply choice to Delaware customers. The list is updated every six months and withholds only those customers who have elected to opt out of such list in accordance with 26 *Del. C. Admin.* § 3001-3. Direct Energy has access to the customer list from Delmarva's secure supplier website, but if Direct Energy has not been able to obtain the customer list, it will work with Delmarva to obtain that list.

8. This docket shall be considered closed at such time as Delmarva has mailed the bill insert and Staff has added an appropriate webpage for residential and small commercial customer reference.

9. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary and proper.

**BY ORDER OF THE COMMISSION:**

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Chair

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Commissioner

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Commissioner

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Commissioner

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Commissioner

ATTEST:

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Secretary